



Paper No. 5

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**JUL 11 2001**

**OFFICE OF PETITIONS  
A/C PATENTS**

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In re Application of :  
Keiji Negi : DECISION GRANTING  
Application No. 09/723,194 : PETITION  
Filed: November 27, 2000 :  
Attorney Docket No. 10830-048001 :

This is a decision on the "Response to Notice of Incomplete Application and Petition that Application be Accorded Filing Date", filed April 17, 2001, which is properly treated as a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of November 27, 2000.

The application was deposited on November 27, 2000. However, on March 26, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice of Incomplete Nonprovisional Application (Notice), stating that the application was deposited without drawings and that the filing date would be the date of receipt of the drawings.

Petitioner has submitted declarations stating that the six (6) sheets were included with the application as filed on November 27, 2000. This argument is not persuasive. The Office file is the official record of the papers originally filed in this application. A review of the official file reveals that no drawings were filed on November 27, 2000, since no such drawings are present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The declarations relied on contain the declarants' recall of routine events which occurred almost five (5) months earlier and are not more persuasive than the record of what was filed as shown by the official file.

Petitioner has further submitted a postcard receipt which contains the text "Drawings \_\_\_ Sheets Formal \_\_\_ 6 Sheets Informal". The postcard was stamped with a date of November 27, 2000, and was also provided with the following notation by an Office employee: "The PTO did not receive the following item(s): 6 sheets of formal drawings".

Petitioner argues that the notation on the postcard merely indicates that no formal drawings were received. The proposition

is set forth that because six (6) sheets of informal drawings were received, the application is entitled to a filing date of November 27, 2000. The notation found on petitioner's postcard receipt is an indication that the Office employee who opened the Express Mail envelope checked the application papers received in the envelope for drawings, but none were found.

Petitioner states that a certified copy of the priority document was also submitted, which contains drawings which are "substantially the same as the informal drawings discussed above"<sup>1</sup>.

The petition is accompanied by a copy of the six (6) sheets of informal drawings purportedly filed on November 27, 2000, and a copy of the six (6) sheets of drawings supplied in the priority document.

A comparison of the six (6) sheets of drawings supplied in the priority document with the six (6) sheets of informal drawings supplied on April 17, 2001, reveals that the drawings are identical, except for the English language descriptive matter found in the informal drawings supplied on April 17, 2001. Accordingly, on petition, the six (6) sheets of drawings supplied in the priority document may be construed as the drawings described in the specification for this application.

In view of the above, the petition to accord the application a filing date of November 27, 2000, with the drawings filed in the priority document as the original drawings for this application is granted.

It is noted that the drawings filed on November 27, 2000, include descriptive matter in a language other than English. Accordingly, this application is properly treated as an application filed in a language other than English. An English language translation of the non-English language application, a statement that the translation is accurate, and the fee set forth in 37 CFR 1.17(k) are required. In order to satisfy this requirement, petitioner may rely on the six (6) sheets of informal drawings supplied on April 17, 2001, as the English language translation, if the English language descriptive matter found in those drawings is an accurate translation of the non-English language descriptive matter found in the drawings filed in the priority document and petitioner files a statement to that effect.

Petitioner is given **TWO MONTHS** from the mailing date of this decision to file the English language translation, the statement that the translation is accurate, and the fee set forth in 37 CFR

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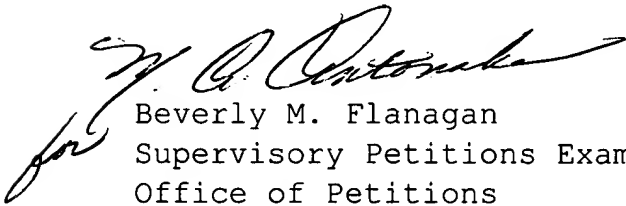
<sup>1</sup>See Page 2 of the petition.

1.17(k) in order to avoid abandonment of the application. This time period may be extended under 37 CFR 1.136(a).

The application is being returned to OIPE to await the response required above and for further processing with a filing date of November 27, 2000, including an indication in Office records that six (6) sheets of drawings were present on filing.

Petitioner's Deposit Account has been charged in the amount of \$130, as authorized by the petition.

Any inquiries related to this decision should be directed to Petitions Attorney Paul Shanowski at (703) 305-0011.



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